

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**PC DRIVERS HEADQUARTERS, LP,**  
*Plaintiff,*

v.

**MALWAREBYTES, INC.,**  
*Defendant.*

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**CIVIL ACTION NO. 1:18-CV-00234**

**APPLICATION FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, PC Drivers Headquarters, LP (“PC Drivers”), files this application for temporary restraining order and preliminary injunction, seeking to enjoin Defendant, Malwarebytes, Inc. (“Malwarebytes”), from identifying any of PC Drivers’ Products as a PUP, encouraging the disabling of any PC Driver software from PC Drivers’ customers’ computers, blocking access to PC Drivers’ official websites, and redirecting consumers seeking access to any links to PC Drivers’ official websites to Malwarebytes’ own website or software landing pages to activate or purchase Malwarebytes’ own products and services

**SUMMARY**

1. PC Drivers filed this action against Malwarebytes asserting claims for violations of the Lanham Act, trademark dilution, trademark infringement, business disparagement, tortious interference with contractual relations, negligence, gross negligence, common-law unfair competition, promissory estoppel, and declaratory judgment arising out of Malwarebytes’ wrongful mischaracterization of all builds and releases of PC Drivers’ DRIVER SUPPORT and DRIVER DETECTIVE software (the “Products”) as “malware” or a “Potentially Unwanted Program” (“PUP”) and disabling the Products from the customers’ computers. Additionally, Malwarebytes is redirecting clicks from paid advertising that should go to PC Drivers’ website to

the Malwarebytes website where it instead markets its own product for sale. Despite demand, Malwarebytes continues to maliciously label PC Drivers' Products as PUP without providing an explanation for the PUP rating or click redirection to PC Drivers.

2. Malwarebytes actions are causing PC Drivers to daily lose customers, goodwill, and incur reputational injuries. Malwarebytes has failed to respond to PC Drivers' demands and inquiries concerning the PUP listing, and continues to mischaracterize PC Drivers' Products. PC Drivers requests that Malwarebytes be enjoined from its wrongful actions to stop any further injuries to PC Drivers.

### **FACTUAL BACKGROUND**

3. PC Drivers provides premium technical support services to consumers. The services include locating and installing all missing and outdated software drivers and working in real time in the background of the operating system to optimize processing. Telephone based human assistance is also included for cases where the customer's needs are not satisfied by software solutions. Based in Austin, PC Drivers sells the Products and technical support services to consumers and businesses throughout the United States under its Federally registered trademarks DRIVER SUPPORT, ACTIVE OPTIMIZATION, and DRIVER DETECTIVE and its common law mark DRIVER SUPPORT WITH ACTIVE OPTIMIZATION and design mark



4. In October 2016, Malwarebytes suddenly and inexplicably categorized all builds and releases of PC Drivers' DRIVER SUPPORT and DRIVER DETECTIVE software with a negative PUP rating and a security risk to Malwarebytes' customers. After multiple correspondences, Malwarebytes referred PC Drivers to AppEsteem for third party certification before Malwarebytes would take any additional action, and proffered that if AppEsteem gave its

approval seal to PC Drivers' software, then Malwarebytes would reconsider delisting that software as PUPs. After PC Drivers provided Malwarebytes with documentation of its AppEsteem approval, Malwarebytes belatedly delisted the Products.

5. In January 2018, PC Drivers began receiving calls from its customers canceling their subscriptions to the Products based on a new PUP rating listing by Malwarebytes. After further investigation, PC Drivers determined that Malwarebytes had re-listed the Products as PUP. The PUP listing provides the users with no information on why the Products have been identified as a "threat" to be quarantined. Malwarebytes preselects over 139 files to quarantine in a manner that encourages the customer to finalize the quarantine with one click. Should the customer prefer to keep the Products, it must undergo a complicated process of individually excepting each of the 139 impacted folders and supporting websites from the Malwarebytes scanning process. In addition to the PUP listing, Malwarebytes also barred customers' access to PC Drivers' official websites. Malwarebytes' actions meant that PC Drivers' customers could not access PC Drivers' websites in order to sign into their own accounts, cancel their subscription service, access PC Drivers' support team or obtain customer service information in order to contact PC Drivers. The news was especially troubling because Malwarebytes is the only anti-malware company with a significant commercial presence to identify PC Drivers' Products as PUP.<sup>1</sup>

6. By letter dated February 1, 2018, PC Drivers provided notice to Malwarebytes of the PUP listing and demanded that Malwarebytes remedy the PUP listing and provide access to PC Drivers' official websites. PC Drivers advised that there had been no substantive changes to

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<sup>1</sup> According to VirusTotal, an independent aggregator of information on viruses and malicious content, Malwarebytes is one of only two companies of the 67 it tracks that identifies DRIVER SUPPORT as PUP. The other is a Russian enterprise of almost zero market share that bases such rating purely on the lack of a free trial period.

its Products since October 2016, and that all versions of its Products still have AppEsteem certification. At the time of this filing, Malwarebytes never formally responded to the letter or remedied the PUP listing. Instead, its outside counsel sent an email on February 15, 2018, advising Malwarebytes was investigating and would respond within a week. Additionally, PC Drivers' applications to Malwarebytes' PUP reconsideration committee have only garnered a reference to Malwarebytes' long list of possible PUP criteria without specifically identifying why PC Drivers' Products have been listed as PUP.

**A. Malwarebytes Disparages PC Drivers' Products to Promote the Sale of its own Product.**

7. PC Drivers' own investigation indicates that Malwarebytes is actually ramping up its attacks on PC Drivers. On February 8, 2018, a Malwarebytes staff member identified as "Metallica" posted on Malwarebytes message board forum a post entitled "Removal instructions for Driver Support." A copy of the posting is attached hereto as **Exhibit 1**. By prominently using the Marks, the post states that Malwarebytes had identified DRIVER SUPPORT as a "system optimizer," which uses "intentional false positives to convince users that their systems have problems. Then they try to sell you their software, claiming it will remove these problems." Malwarebytes has not identified any "intentional false positives" created by DRIVER SUPPORT because there are none. The post then goes on to suggest that federally required legal notices are unwanted and false popup boxes. Notably, Malwarebytes advises that the best way to uninstall the DRIVER SUPPORT software is to download Malwarebytes' own software, rather than providing PC Drivers' easy to follow instructions on how to uninstall the Products.

8. Additionally, a recent Google search for "driver support" immediately pulls up a question as to whether PC Drivers' product is malware. A copy of the sample Google search from February 16, 2018, is attached as **Exhibit 2**. The link takes you to post on

www.botcrawl.com by Sean Doyle who also falsely claims DRIVER SUPPORT issued false positives using the Marks. Once again, the proposed solution for removing DRIVER SUPPORT is to download and install Malwarebytes' own software. A closer review of the Botcrawl website and Mr. Doyle's other posts show that Mr. Doyle's consistently recommends Malwarebytes' software be downloaded as a cure to remove potentially unwanted programs. Upon information and belief, Mr. Doyle receives monetary or in-kind benefits from Malwarebytes for each sales lead or software download generated from this posting.

**B. Malwarebytes Uses its Free Product to Redirect Potential PC Drivers Customers to Malwarebytes.**

9. Malwarebytes is also profiting from the use of PC Drivers' Marks through by using the MALWAREBYTES free version product to redirect clicks from the PC Drivers website to the Malwarebytes website. When a Malwarebytes free version software user opens a search engine in his own web browser and searches for DRIVER SUPPORT or ACTIVE OPTIMIZATION, PC Drivers' ads or website links bearing the Marks will prominently appear in the search engine results. However, instead of going directly to PC Drivers' official website when clicking these links, it redirects consumers to the Malwarebytes website for the purpose of executing a Malwarebytes sale. The result is that Malwarebytes obtains the benefits of a potential paying customer based on the acquisition costs paid by PC Drivers.

**ARGUMENTS AND AUTHORITIES**

10. Unless restrained, Malwarebytes will likely continue these activities, thereby further injuring PC Drivers. PC Drivers is entitled to a temporary restraining order under principals of equity and under the statutes and jurisprudence of the United States, in the form of a prohibitory and mandatory restraint and injunction. In order to obtain a temporary restraining order, a party must show that (1) it faces irreparable injury; (2) there is no adequate remedy at

law; (3) it has a likelihood of success on the merits; (4) the balance of hardships favors the injunctive relief; and (5) the injunctive relief will not adversely affect the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, PC Drivers is able to meet each of those elements, and therefore, Malwarebytes should be ordered to:

- i. Refrain from listing any of PC Drivers' Products as PUP or malware;
- ii. Refrain from blocking PC Drivers' customers' access to PC Drivers' official websites, including [driversupport.com](http://driversupport.com) and [activeoptimization.com](http://activeoptimization.com);
- iii. Refrain from encouraging the disabling any of PC Drivers' Products from PC Drivers' customers' devices;
- iv. Refrain from redirecting customers from PC Drivers' advertisements or search engine results to Malwarebytes' websites or software landing pages or notices.

11. PC Drivers will suffer immediate and irreparable injury, loss, or damage if Malwarebytes and, as applicable, its officers, directors, agents, servants, employees, managers, and representatives are not immediately enjoined. Specifically, Malwarebytes' actions are causing PC Drivers to daily lose customers, goodwill, and incur reputational injuries that cannot be quantified into damages. It is not possible to quantify how many potential customers PC Drivers has lost due to Malwarebytes' redirection of potential customers and other wrongful conduct. Additionally, PC Drivers no longer controls its goodwill and cannot control how the public perceives PC Drivers and its Marks as a result Malwarebytes' infringement, misrepresentations, and dilution of the Marks. Accordingly, without the issuance of the requested injunctive relief, there is no adequate remedy at law. Finally, Malwarebytes has put PC Drivers in the position of having paid monthly subscription customers who cannot use the service for which they are paying and who cannot access the PC Drivers website in order to cancel their subscription. Malwarebytes it thus causing a violation of federal consumer protection laws under the purview of the FTC.

12. Based on the foregoing, it is probable that PC Drivers will recover from Malwarebytes after a trial on the merits for their causes of action. Malwarebytes' actions are purely for its own commercial gain. PC Drivers' Products do not create false positives and create value for PC Drivers' customers. Malwarebytes' conduct is tortious and it will be unable to prove that PC Drivers' Products do not provide value to its customers.

13. Lastly, any injury that Malwarebytes faces outweighs any injury to PC Drivers by granting the injunctive relief and the injunctive relief would not adversely affect public policy or interests. Malwarebytes delisted PC Drivers' Products as a PUP after demand in October 2016, and it cannot demonstrate that it will suffer any harm by stopping its tortious conduct. Consequently, in order to avoid irreparable injury, PC Drivers seeks a temporary restraining order as set forth above

14. PC Drivers additionally requests that, after issuing a temporary restraining order, the Court set PC Drivers' application for hearing, and upon completion of said hearing, enter a preliminary injunction providing the same relief set forth in the temporary restraining order.

15. PC Drivers is willing to post a bond if so required by the Court.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff, PC Drivers Headquarters, LP, prays that the Court set a hearing on Plaintiff's application for preliminary injunctions, and enter a temporary restraining order and preliminary injunction enjoining Defendant Malwarebytes, Inc., as follows:

- 1) Requiring Malwarebytes and all others acting in concert and participation with it to refrain from labeling any of PC Drivers' Products as PUP or malware, and

- 2) Requiring Malwarebytes and all others acting in concert and participation with it to refrain from blocking PC Drivers' customers' access to PC Drivers' official websites, including [driversupport.com](http://driversupport.com) and [activeoptimization.com](http://activeoptimization.com), and
- 3) Requiring Malwarebytes and all others acting in concert and participation with it to refrain from encouraging the disabling of any of PC Drivers' Products from its customers' device, and
- 4) Requiring Malwarebytes and all others acting in concert and participation with it to refrain from redirecting web traffic to Malwarebytes' own websites and software pages.

Respectfully submitted,

By: /s/ James G. Ruiz

James G. Ruiz

State Bar No. 17385860

[jruiz@winstead.com](mailto:jruiz@winstead.com)

Marcus J. Brooks

State Bar No. 24040579

[mbrooks@winstead.com](mailto:mbrooks@winstead.com)

Andrew J. Schumacher

State Bar No. 24051310

[aschumacher@winstead.com](mailto:aschumacher@winstead.com)

**WINSTEAD PC**

401 Congress Avenue, Suite 2100

Austin, Texas 78701

Telephone: 512.370.2800

Telefax: 512.370.2850

**ATTORNEYS FOR PLAINTIFF  
PC DRIVERS HEADQUARTERS, LP**